



HCRG Workforce Solutions

Terms & Conditions

for the Provision of Software Services

HCRG Workforce Solutions Limited (company number 05980817) (the “Supplier”)

Terms and Conditions for the Provision of Software Services

The attention of the Client is, in particular, drawn to clause 15.

1 Interpretation

1.1 In these Conditions the following expressions will have the following meanings:

“Applicable Law”	all laws applicable within England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services;
“Call Off Contract”	means the Call Off Contract between the Client and the Supplier for the provision of staffing services.
“Client”	means the client which purchases Services from the Supplier as identified in the Order;
“Confidential Information”	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 17
“Contract”	means the terms and conditions under this contract together with the Schedules and any annexes as well as any documents referred to or attached to it, between the Supplier and the Client for the provision of the Services;
“Client Data”	means any data inputted by the Client, or the Supplier on the Client's behalf that is not Personal Data for the purpose of using the Services or facilitating the Client's use of the Services
“Data Protection Legislation”	all UK Data Protection Legislation and any other applicable European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including the privacy of electronic communications);
“Framework Agreement”	means CCS RM1557 GCloud 15.
“Force Majeure Event”	an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, epidemic, pandemic or default of suppliers or subcontractors
“Intellectual Property Rights”	patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, software, rights in confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection subsisting now or in the future in any part of the world;
“Order”	an order made by the Client for the provision of Services pursuant to any applicable Framework Agreement or Call-Off Contract between the Client and the Supplier;
“Replacement Supplier”	any third party who is appointed by the Client to provide services which are identical or similar to any of the Services following termination of this Contract;
“Schedule”	means the schedules attached to this Contract
“Service Specification”	the detailed service specification set out, or provided with the Order;
“Services”	means as described in the Schedule (Specification of Services)
“Software Platform”	any software platform and related technology which may be made available by the Supplier to the Client in the performance of the Services;
“Transferring Employees”	any employees of the Supplier who are exclusively engaged in the provision of the Services immediately before the termination of this agreement and who are liable to transfer to the Client or a Replacement Supplier under TUPE at any time after notice of the termination of this Contract or the relevant Call Off Agreement is served;
Transfer	means Transfer of Undertakings (Protection of Employment) Regulations 2006;
“UK Data Protection Legislation”	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426); and
“Worker”	an individual introduced by the Supplier under the Call Off Contract to perform staffing services to the Client.

- 1.2 References to “clauses” and “Schedule” are to the clauses of and Schedule to this Contract and a reference to a “paragraph” is to a paragraph of the Schedule.
- 1.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.4 Any phrase introduced by the terms “including”, “include” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2 Basis of contract

- 2.1 The terms and conditions of this apply to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order must:
- 2.2.1 be set out in the format required by the Supplier from time to time;
 - 2.2.2 properly identify the Client;
 - 2.2.3 be complete and accurate and contain a complete and accurate Service Specification;
 - 2.2.4 set out in the Service Specification all applicable deadlines, performance measures, methods of performance measurement and minimum performance levels which apply to the Contract; and
 - 2.2.5 accurately define any timescales by reference to which the Services are to be provided.
- 2.3 An Order will only be deemed to be accepted when the Supplier confirms acceptance of the Order in writing or commences the provision of the Services (whichever is earlier), at which point the Contract will come into existence (“Commencement Date”).
- 2.4 The Client and the Supplier will comply with the ordering procedures set out in any Orders and any other applicable requirements of any Framework Agreement or Call-Off Contract pursuant to which the Order is made.
- 2.5 This Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Contract.

3 The Services

- 3.1. The Supplier shall perform the Services in accordance with the Order, subject to the terms and conditions of this Contract and the Framework Agreement, the Call Off Contract with reasonable skill and care.
- 3.2. The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 3.2.1. planned maintenance as notified to the Client from time to time; and
 - 3.2.2. unscheduled maintenance performed outside normal business hours, provided that the Supplier has used reasonable endeavours to give the Customer reasonable notice in advance.

4 Performance of Services

- 4.1 The Client and the Supplier will co-operate in good faith with respect to all matters arising under, out of or in connection with the Contract.
- 4.2 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Contract.
- 4.3 The Supplier does not warrant that:
- 4.3.1 the Client's use of the Services will be uninterrupted or error-free; or
 - 4.3.2 the Software or the Services will be free from vulnerabilities or viruses; or
- 4.4 The Supplier is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.5 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission of the Client (or any employee, agent or contractor of the Client) or failure by the Client to perform any of its obligations to the Supplier:
- 4.5.1 the Supplier shall not be liable for any damage, loss, delay or cost suffered or incurred by the Client arising directly or indirectly thereby;
 - 4.5.2 the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from such act, omission or failure; and
 - 4.5.3 any deadline, performance measure, or performance level which has been breached or affected as a result of such act, omission or failure shall be deemed to be extended as is reasonably agreed, having regard to the circumstances.

5 Client's Obligations

- 5.1 The Client shall:
- 5.1.1 ensure that the terms of the Order are complete and accurate;
 - 5.1.2 provide the Supplier with such information and materials as the Supplier may reasonably require in order to provide the Services, and ensure that such information is accurate in all material respects and provided in such format, medium and at times as may be specified by the Supplier from time to time;

- 5.1.3 co-operate with the Supplier in all matters relating to the Services;
 - 5.1.4 provide the Supplier, its employees, agents, consultants and sub-contractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier;
 - 5.1.5 enter into an end user software licence as required by the Supplier and/or any third party service provider in relation to its use of any Software Platform, in order to make full use of the Services;
 - 5.1.6 comply with all Applicable Law with respect to its activities under the Contract;
 - 5.1.7 obtain and maintain all necessary licences, permissions and consents which may be required in order for the Services to be provided before the Commencement Date;
 - 5.1.8 keep and maintain all materials, equipment, documents and other property of the Supplier at the Client's premises in safe custody at its own risk and maintain those materials in good condition until they are returned to the Supplier. The Client shall not dispose of or use those materials other than in as permitted under this Contract;
 - 5.1.9 ensure that all information uploaded onto the Software Platform is accurate and complete, including, ensuring that timesheets detailing the time worked by Workers are authorised by the Client and are accurate.
 - 5.1.10 shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier
 - 5.1.11 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
 - 5.1.12 be, to the extent permitted by law and except as otherwise expressly provided in this Contract, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet
 - 5.1.13 the Client shall provide the Supplier with copies of any applicable information, documentation, policies, rules and procedures as may be relevant to the performance of the Services from time to time (and shall promptly inform the Supplier of any amendments to such documents) to enable the Supplier to comply with its obligations under the Contract, any applicable Framework Agreement or Call-Off Contract.
- 5.2 The Customer shall own all right, title and interest in and to all of the Client Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Client Data.
- 5.3 The Client shall not:
- 5.3.1 allow any third party (other than authorised users expressly permitted by the Supplier) to use or access the Software Platform;
 - 5.3.2 sub-licence, assign or novate, mortgage, charge or in any other way deal with any or all of its rights in, or obligations in relation to any licence of the Software Platform to any third party in whole or in part;
 - 5.3.3 attempt to obtain, or assist third parties in obtaining, access to the Services and/or documentation other than as provided under this clause 5.3
 - 5.3.4 copy, adapt, reverse engineer, decompile, disassemble or modify any software forming part of the Software Platform in whole or in part;
 - 5.3.5 introduce or permit any viruses, trojans or other harmful or malicious code to be installed on the Software Platform
 - 5.3.6 allow any criminal, defamatory, infringing, discriminatory, offensive or otherwise unlawful material to be uploaded to the Software Platform.

6 Charges and payment

- 6.1 The Client shall pay the Supplier within thirty (30) days of the date of an invoice submitted by the Supplier in accordance with the terms of the Contract.
- 6.2 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax (or any other sales tax chargeable in any jurisdiction) from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client will, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.3 If the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Supplier reserves the right to require the Client pay interest and charges on the overdue amount at the rates pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment.

7 Software Platform

- 7.1 Subject to clause 5.1.5, the Supplier shall grant the Client any necessary licence to use the Software Platform, in connection with the provision of the Services.
- 7.2 The Supplier shall not be liable for any damage, loss, delay or cost suffered or incurred by the Client which is caused by or attributable to the use of the Software Platform contrary to the Supplier's instructions, or any interference with, modification or alteration of the Software Platform by any person other than the Supplier or the Supplier's contractors or agents.
- 7.3 The Supplier:
 - 7.3.1 does not warrant that the Client's use of the Software Platform will be uninterrupted or error-free or that the Services, or that any information obtained by the Client from its use of the Software Platform will complete in all respects or otherwise meet the Client's requirements;
 - 7.3.2 does not warrant that the Software Platform will operate on any particular hardware owned or used by the Client; and
 - 7.3.3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over

communications networks and facilities, including the internet, and the Client acknowledges that the Services and any related documentation may be subject to limitations, delays and other problems inherent in the use of such communication facilities.

8 Intellectual Property Rights

- 8.1 All right, title and interest in and to any software used by the Supplier in connection with the Services and any Intellectual Property Rights arising under, out of or in connection with the Services will be owned by the Supplier and/or its licensors. Except as expressly stated herein, this Contract does not grant the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services.
- 8.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Client's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Client.

9 Data Protection

- 9.1 The expressions "**controller**", "**processor**", "**data subject**", "**personal data**", "**processing**", "**personal data breach**" and "**appropriate technical and organisational measures**" shall have the meanings given to those terms in Data Protection Legislation.
- 9.2 The parties shall comply with Data Protection Legislation. The parties acknowledge that for the purposes of Data Protection Legislation, the Client is the Controller and the Supplier is the Processor.
- 9.3 The ownership to any right, title and interest in any personal data shared by the Client to the Supplier under this Contract shall retain with the Client. Sole responsibility for the accuracy and completeness of that data shall also remain with the Client
- 9.4 The Client confirms that it has all necessary consents and notices in place to enable the lawful transfer and processing of personal data to the Supplier in accordance with and for the purposes of the performance of this Contract.
- 9.5 The Supplier shall, in relation to the processing of personal data under this Contract:
- 9.5.1 process personal data in accordance with its privacy and security policy for the time being in force in compliance with Data Protection Legislation, a copy of which can be supplied on request;
 - 9.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing, accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might thereby result to the standard required by Data Protection Legislation;
 - 9.5.3 ensure that it takes adequate measures to protect the confidentiality of personal data;
 - 9.5.4 notify the Client without undue delay on becoming aware of a personal data breach;
 - 9.5.5 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 9.5.6 maintain complete and accurate records of all information to demonstrate its compliance with this clause; and
 - 9.5.7 at the written direction of the client, delete or return personal data and copies thereof to the Owner on termination of the agreement unless required by law to store the personal data.
- 9.6 The Client:
- 9.6.1 agrees that personal data may be transferred to or stored outside the EEA in order to carry out the Services and the Supplier's other obligations under the Contract and the Client shall ensure that any consent required of a data or third party shall properly extend to such transfer;
 - 9.6.2 shall ensure that any relevant third parties have consented to the transfer to and processing of personal data by the Supplier as envisaged under the Contract; and accepts and grants permission to the Supplier for the Supplier to collect, and use, any usage data acquired under this Contract. Similarly the Client accepts and grants permission to the Supplier to use that collected data for internal research and development purposes and/or to disclose that collected data in an aggregated or anonymised manner.
- 9.7 The Supplier shall (and shall ensure that all persons acting on its behalf and all individuals who are processing Personal Data shall) at the Supplier's written request, either securely delete or securely return all the Personal Data to the Client after the earlier of:
- 9.7.1 The end of the provision of the relevant Services related to processing of such Personal Data; or
 - 9.7.2 Once processing by the Supplier of any Personal Data is no longer required for the purpose of the Supplier's performance of the relevant obligations under this Agreement
 - 9.7.3 If any law, regulation or government or regulatory body requires the Supplier to retain any documents or materials that the Supplier would otherwise be required to return or destroy, it will notify the Client in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.
- ## 10 Employees
- 10.1 The Client warrants to the Supplier that none of its employees nor the employees of any other party who have been involved in the provision of any services equivalent to the Services prior to the Commencement Date will become employees of the Supplier by reason of the transfer of the provision of the Services to the Supplier pursuant to TUPE.
- 10.2 The parties consider that TUPE will not apply upon termination of the Contract. If TUPE is found to apply, in relation to any Transferring Employees, the Supplier shall:
- 10.2.1 as soon as reasonably practicable but in any event (except where the period of notice of termination is shorter than thirty (30)

days) at least thirty (30) days prior to the termination of the Contract, prepare and provide to the Client and/or, at the direction of the Client, to any Replacement Supplier, a list of Transferring Employees and will provide such other information as the Supplier is required to provide pursuant to TUPE;

10.2.2 perform and discharge all its obligations as employer of the Transferring Employees up to the date of termination of the Contract and will indemnify the Client in relation to:

- (a) (except where the period of notice of termination is too short for the Supplier reasonably to comply with such obligations) any failure by the Supplier to inform or consult the Transferring Employees pursuant to TUPE;
- (b) all and any claims in respect of all emoluments and outgoings in relation to such employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the termination of the Contract; and
- (c) any claim made by or in respect of any person employed or formerly employed by the Supplier other than a Transferring Employee or any other person who claims to have become an employee of the Client or Replacement Supplier by virtue of TUPE on or before the transfer date.

10.3 The Client shall take responsibility for (or shall procure that the Replacement Supplier shall take responsibility for) any outstanding obligations of the Supplier in relation to any Transferring Employees (including in respect of accrued holiday entitlements and accrued holiday remuneration prior to the termination of the Contract) and shall indemnify the Supplier against all claims arising from the Client's or any Replacement Supplier's failure to perform and discharge any obligation in respect of any Transferring Employees arising from or as a result of:

10.3.1 any failure by the Client to fulfil any of its obligations arising pursuant to TUPE in respect of the Transferring Employees;

10.3.2 any act or omission by the Client or the Replacement Supplier relating to a Transferring Employee occurring on or after the termination of the Contract; and

10.3.3 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the termination of the Contract.

11 Duration and Termination

11.1 The Supplier may terminate the Contract or any part or all of the Services at any time on giving at least one (1) month's written notice to the Client. For the avoidance of doubt, termination of part of the Services, shall not affect any Services not terminated by the Supplier.

11.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:

- 11.2.1 commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within twenty one (21) days after receipt of notice in writing to do so;
- 11.2.2 is made the subject of an administration order; an order for its winding-up; dissolution or is subject to a resolution for its winding-up or for the appointment of an administrator or liquidator;
- 11.2.3 has a moratorium declared in respect of any of its debts; or
- 11.2.4 enters into any composition or arrangement with one or more of its creditors; or
- 11.2.5 suffers a liquidator, administrator or other receiver, manager or other official to be appointed in relation to it or in relation to the whole or a substantial part of its undertaking or assets or proceedings are initiated against for the appointment of any of the foregoing; or
- 11.2.6 suffers an encumbrancer taking possession of the whole or a substantial part of its undertaking or assets; or
- 11.2.7 is the subject of any notice of an intention to appoint an administrator is given by its directors or members or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986); or
- 11.2.8 suffers a deterioration in its financial position to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- 11.2.9 is subject, in any jurisdiction, to any event similar or analogous to those set out in clauses 11.3.2 to 11.3.7 (inclusive).

11.3 Without limiting its rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

12 Consequences of Termination

12.1 Upon termination of the Contract, all rights granted to the Client under any applicable software licence provided by the Supplier or through any third party in connection with the provision of the Services shall immediately cease, including any right to use or access the Software Platform.

12.2 On termination of the Contract (for whatever reason) the Client will immediately pay the Supplier all of its outstanding unpaid invoices (together with interest where applicable) and in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which will be payable immediately on receipt.

12.3 Following termination of the Contract for any reason, the Supplier shall:

- 12.3.1 as soon as reasonably practicable after termination destroy or deliver to the Client all documentation and materials that it has agreed to supply under the Contract and which exist at the date of termination, whether or not complete and for which payment in full has been received from the Client; and
- 12.3.2 assist the Customer and/or the Replacement Supplier to the extent reasonably required to facilitate the smooth migration of the services to the Client or the Replacement Supplier.

- 12.4 The Supplier shall retain all documents relating to the provision of the Services for the period of 7 years after the date of the termination of any applicable call-off contract and thereafter shall destroy them.
- 12.5 Clauses which are capable of having effect after termination of the Contract will survive termination. Notwithstanding that, on termination of the Contract clauses 1, 6 (insofar as payment remains due following termination) 8, 9, 10, 12, 13, 14, 15 and 17 will survive and continue in full force and effect.

13 Non-Solicitation

- 13.1 Except in respect of any transfer of Transferring Employees pursuant to clause 9.1, neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Client) in the receipt of the Services at any time during the term of the Contract or for a further period of 6 months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

14 Indemnity

- 14.1 The Client shall indemnify, and keep indemnified the Supplier against any and all direct losses or liabilities, damages, proceedings, demands, claims, costs and expenses (including reasonable legal expenses) incurred by the Supplier arising out of or in connection with the Client's use of the Services, or in relation to any breach whatsoever of the Client's obligations under this Contract or any other act or omission, including negligence or wilful misconduct of the Client, including but not limited to any tax related claims, any data protection breaches, or any claim by a third party that the Client has infringed any Intellectual Property Rights or other rights of that third party in connection with the operation of this Contract. If a claim or circumstance arises which may give rise to a claim for an indemnity by the Supplier against the Client under this clause (without such requirements being a condition precedent to liability under this clause):
- 14.1.1 the Supplier shall give notice of any such claim as soon as is reasonably practicable;
- 14.1.2 the Supplier shall give reasonable co-operation to the Client in the defence and settlement of such claim, at the Client's expense; and
- 14.1.3 subject to the Client providing security to the Supplier to the Supplier's reasonable satisfaction against any such claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Client may reasonably request to avoid, dispute, compromise or defend the Claim.
- 14.2 In the defence or settlement of any claim, the Supplier may procure the right for the Client to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on two (2) days' notice to the Client without any additional liability or obligation to pay liquidated damages or other additional costs to the Client.
- 14.3 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Client to the extent that the alleged infringement is based on:
- 14.3.1 a modification of the Services or documentation by anyone other than the Supplier; or
- 14.3.2 the Client's use of the Services or documentation in a manner contrary to the instructions given to the Client by the Supplier; or
- 14.3.3 the Client's use of the Services or documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority; or
- 14.3.4 the Client Data; or
- 14.3.5 the Client's breach of this agreement.

15 Limitation of Liability

- 15.1 Nothing in this Contract excludes the liability of either party:
- 15.1.1 for death or personal injury caused by the relevant party's negligence; or
- 15.1.2 for fraud or fraudulent misrepresentation; or
- 15.1.3 any liability that cannot be excluded by law.
- 15.2 Except as expressly and specifically provided in the Contract:
- 15.2.1 the Client assumes sole responsibility for the use of the Services by the Client and any results obtained from it, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Services, or any actions taken by the Supplier at the Client's direction;
- 15.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by Applicable Law, excluded from this Contract; and
- 15.2.3 the Software Platform and any related documentation, materials or information are provided to the Client on an 'as is' basis.
- 15.3 Subject to clauses 15.1 and 15.2:
- 15.3.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Contract; and

15.3.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the lower of (1) the amount of fees paid or payable by the Client to the Supplier in the preceding 12 months and (2) the financial limits set out in the Order Form.

15.4 Nothing in this Contract excludes the liability of the Client for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

16 Force Majeure

16.1 The Supplier will not be liable to the Client as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

16.2 If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 12 weeks, the other party will, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

17 Confidentiality

17.1 A party ("**receiving party**") will keep in strict confidence all technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("**disclosing party**"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, financial affairs, clients, candidates for temporary or permanent employment, products or services which the receiving party may obtain. The receiving party will only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and will ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 17 will survive termination of the Contract.

18 General

18.1 Assignment and other dealings

18.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

18.1.2 The Client shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

18.2 **Variation.** Any variation of the Contract shall not be effective unless it is in writing and signed by the parties or their authorised representatives.

18.3 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy; or prevent or restrict the further exercise of that or any other right or remedy.

18.4 Severance

18.4.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

18.4.2 If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

18.5 Notices

18.5.1 Any notice or other communication given to a party under or in connection with the Contract will be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and will be delivered personally or sent by prepaid first-class post (within the UK), airmail or by commercial courier, fax or e-mail.

18.5.2 A notice or other communication will be deemed to have been received: if delivered personally, when left at the address referred to in clause 18.5.1; if sent by pre-paid first class post (within the UK), at 9.30 am on the second Business Day after posting; if sent by airmail, at 9:30 am on the fourth Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

18.5.3 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

18.6 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.

18.7 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

18.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

SCHEDULE: Specification of Service
(defined with Buyer at call-off)